

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 15372
[Redacted],)	
)	DECISION
Petitioners.)	
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)	

On January 16, 2001, the Tax Discovery Bureau of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination (NOD) to [Redacted] (taxpayers), proposing additional use tax, penalty, and interest for the periods May 1996 and April 1998 in the total amount of \$4,922.

On February 6, 2001, a timely protest and petition for redetermination was filed by [Redacted] (Mr. [Redacted]). A hearing was requested by Mr. [Redacted] and held on May 1, 2001. The Commission has reviewed the file, is advised of its contents, and hereby issues its decision modifying the deficiency determination.

The taxpayers are residents of Idaho and filed Idaho full-year resident income tax returns for the years 1993 through 1999.

The taxpayers' received a homeowner's exemption on their [Redacted], Idaho residence at [Redacted] for the years 1993 through 2001. The property was put into a trust named [Redacted] Family Revocable Trust on October 1, 2000.

The Commission's Tax Enforcement Technician (technician) sent a letter to [Redacted] County dated October 31, 2000, requesting information on the taxpayers' voter registration records. The taxpayers registered to vote in Idaho in October 1992. They voted in the November 1996 Idaho general election.

Mrs. [Redacted] was issued an Idaho driver's license on December 13, 1995 and April 23, 1997.

The Commission was informed that the taxpayers had three motor vehicles in Idaho displaying Oregon license plates. The motor vehicles were a 1991 blue Dodge Dakota (Dakota) with Oregon license number [Redacted]; a 1967 red Ford Mustang (Mustang) with Oregon license number [Redacted]; and a 1995 blue Shelby Cobra 1966 Replica (Cobra) with Oregon license number [Redacted].

On June 9, 2000, the technician sent a letter to the taxpayers concerning these motor vehicles. The taxpayers were informed that Idaho residents are responsible for paying Idaho sales/use tax on all tangible personal property brought into Idaho. The technician enclosed a copy of the Commission's Notice of Sales/Use Tax Due form for each motor vehicle to assist the taxpayers in computing the tax and interest due on these motor vehicles.

On June 28, 2000, Mr. [Redacted] returned to the Commission the Notice of Sales/Use Tax Due form for each motor vehicle. The Form for the 1967 Mustang showed tax due, and Mr. [Redacted] included a payment for that tax. The Notice of Sales/Use Tax Due forms for the Dakota and Cobra had SOLD written across the form by Mr. [Redacted].

On July 6, 2000, the technician sent a letter to the taxpayers informing them that Idaho sales/use tax remained due on the Dakota and Cobra. In the letter, the technician stated that, "the fact that you no longer own these vehicles does not relieve you of the responsibility to pay the Idaho sales/use tax due on those vehicles at the time they were first brought into Idaho." Again, the technician enclosed a copy of the Commission's Notice of Sales/Use Tax Due form for each motor vehicle. The taxpayers returned the Notice of Sales/Use Tax Due forms on July 26, 2000.

In a letter dated August 10, 2000, the technician acknowledged receipt of the taxpayers' check for \$112.50 on August 2, 2000, for Idaho use tax based on a value of \$1,000.00 for the Cobra and \$1,250.00 for the Dakota. The technician informed the taxpayers that these values were far

below the expected fair market values according to the NADA Official Used Car Guide, which showed an average retail value for the Dakota of \$5,500. Research on the Internet showed a value for the Cobra of \$45,000. The technician stated in the letter that the Commission might calculate the tax based on these values if the taxpayers were unable to provide documents to support the values they have declared. The taxpayers were informed that such documents might include their original bill of sale, evidence of damage to the vehicles, repair bills, recent sales information to the new owners, etc. The technician requested that taxpayers send such documents for the Commission's review.

On August 22, 2000, Mr. [Redacted] called the technician and said he didn't understand the last letter he received since he had paid the tax. The technician explained to Mr. [Redacted] that the values he assigned to the vehicles were extremely low and that he would need to provide documentation to support such low values. Mr. [Redacted] said he would send a statement. The technician further explained that "documentation" beyond his statement was needed, for example; name of person sold to; recent amounts sold for that could be verified; repair bills; etc. Mr. [Redacted] said he had a receipt from [Redacted]. Mr. [Redacted] said he took the Cobra to the swap meet in Nevada, so there is no Bill of Sale. The technician told Mr. [Redacted] to get names, etc. of persons in charge of the Swap Meet so they could be contacted. Mr. [Redacted] said the Cobra was never driven; he took out the engine, etc. and sold the body only. Mr. [Redacted] stated he would provide what he could.

The technician received a letter on September 20, 2000, from Mr. [Redacted] with additional information on the Dakota's value. An application and flyer for the [Redacted] Swap Meet held on April 7, 8, and 9, 2000 were also included with the letter. In his letter, Mr. [Redacted] stated in pertinent part:

The cobra was put almost together but never finished and then taken back apart and the body & title were sold at [Redacted] swap meet. Both were cash sales so I don't even have there [sic] names I just signed over title.

In the technician's letter dated October 19, 2000 to the taxpayers, she stated in pertinent part:

We have reviewed the information you provided to support the low values you placed on the above vehicles.

We accept your documentation to support the low value on the 1991 Dodge pickup.

We do not accept your documentation to support the value placed on the 1995 Shelby. Our research indicates that this type of vehicle sells in the neighborhood of \$45,000.00. The information you provided simply shows that you rented a booth at a swap meet. The amount you may have sold it for at the swap meet was not included. In addition, since you sold only the body and title at the swap meet, the amount you may have sold it for would not represent the actual value of the vehicle at the time you initially purchased it.

If you are unable to provide documents to support what you actually paid for this vehicle when you initially purchased it, we will assert sales/use tax is due on \$45,000.00. If you purchased it in kit form, the tax is due on the purchase price of the kit and on all parts you may have purchased subsequent to the kit purchase. (If you paid tax on the purchase of parts, you will need to provide receipts to support the tax paid.)

In the technician's letter dated November 1, 2000, she stated that she reviewed the taxpayers' application for title on their purchase of a 2000 Dodge Durango and noted that a 1996 Jay motorhome was used as a trade-in. The taxpayers purchased the 2000 Dodge Durango on June 12, 2000, and then completed an Application for Certificate of Title in Idaho on July 28, 2000.

The technician reviewed the taxpayers' Idaho income tax returns that showed the motorhome was depreciated on two of the taxpayers' Schedule C businesses: [Redacted] and [Redacted]. The income tax returns indicated that this vehicle was used 50 percent of the time in the taxpayers' Idaho business and the purchase price for depreciation purposes was \$21,116. The total

purchase price of the motorhome was \$42,232. The technician concluded that the motorhome had to be present in Idaho, because it was depreciated on the taxpayers' Idaho individual income tax returns. The technician requested documentation to show that the taxpayers had paid a general sales/use tax to Idaho or to any other state on the purchase of the motorhome.

On November 3, 2000, [Redacted] (Mrs. [Redacted]) spoke with the technician over the telephone. Mrs. [Redacted] made the following statements during the telephone call:

1. The motorhome was always in Oregon.
2. [Redacted] conducts business in Oregon and in Arizona.
3. Mr. [Redacted] lived in the motorhome when he was in Oregon on both [Redacted] business and [Redacted] business.

The technician asked Mrs. [Redacted] if Oregon returns were filed for [Redacted]? Mrs. [Redacted] replied yes. The technician asked why there were no Oregon returns attached to their resident Idaho income tax returns? Mrs. [Redacted] replied that she doesn't know, she has an accountant for that. The technician asked what vehicles were registered and used in Idaho in the past three years? Mrs. [Redacted] replied that their Dodge Durango is registered here now, a 1991 Dodge truck, a van in [Redacted] name, and a Mercedes Benz for her.

On November 6, 2000, letters were sent to the Arizona and Oregon Departments of Revenue requesting a copy of the taxpayers' individual income tax returns for 1996, 1997, 1998, and 1999 filed with these states.

Mrs. [Redacted] sent a letter dated November 9, 2000, to the technician in response to the technician's letter dated November 1, 2000. In this letter Mrs. [Redacted] stated in pertinent part:

As per our telephone conversation on November 3, 2000 the Jayco Motor home was used in Oregon. The motor home was not present in Idaho. It was stored in Oregon and used to live in when working in Oregon.

We purchased the motor home in Oregon and used it as a trade-in in Oregon. We have licensed our personal vehicle the Dodge Durango in Idaho. Over the years we have had several vehicles registered in Idaho. The most recent are a 1995 Chrysler Town and Country Van, which sold November 7th and previous to the van a 1985 Mercedes 190E. . .

Mrs. [Redacted] sent a letter dated November 14, 2000, to the technician in response to the technician's letter dated October 19, 2000. In this letter Mrs. [Redacted] stated in pertinent part:

As per your telephone conversation with [Redacted] the Replica body was sold at the [Redacted] Swap Meet.

In response to the technician's November 6, 2000, letters of inquiry, both the Arizona and Oregon Departments of Revenue replied back to the technician that the taxpayers did not file individual income tax returns for the years 1996 through 1999 in their respective states.

The technician issued a NOD to the taxpayers on January 16, 2001, for the Cobra and Jay motorhome. Records from the state of Oregon show the taxpayers as the vehicle owners on the titles. The use tax on the 1996 Jay motorhome was based on the value shown on the taxpayers' 1996 Idaho income tax return at the time it was placed into service with [Redacted]. The use tax on the 1995 Shelby Cobra, [Redacted] was determined based on values of the motor vehicle found by conducting research on the Internet in April 2000. Interest for the Jay motorhome was calculated from the date the motorhome was placed in service on May 26, 1996, for [Redacted]. Interest for the Cobra was calculated from the date it was titled and registered in Oregon on April 28, 1998.

The tax amount in the original NOD was based on the following values for the taxpayer's motor vehicles:

<u>VEHICLE TYPE</u>	<u>VIN #</u>	<u>VALUES \$</u>
1996 Jay motor home	[Redacted]	\$21,116
1995 Shelby Cobra (1966 replica)		<u>44,000</u>
	Total value	<u>\$65,116</u>

The tax, penalties, and interest asserted in the original NOD were as follows:

<u>PERIOD</u>	<u>VEHICLE TYPE</u>	<u>TAX</u>	<u>NONFILER PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
5/26/96	Jay motor home	\$1,056	\$264	\$359	\$1,679
4/28/98	Shelby Cobra	2,200	550	493	<u>3,243</u>
			<u>TOTAL</u>		<u>\$4,922</u>

Mr. [Redacted] sent a letter dated February 6, 2001, that stated, “we are protesting the deficiency and would like a hearing as soon as possible.”

The taxpayers’ file was transferred to the Commission’s legal/tax policy division to allow them to continue with their rights of appeal.

A hearing was held on May 1, 2001, at the Commission’s Boise offices. Mr. [Redacted] attended the hearing.

At the hearing, the Tax Policy Specialist (specialist) asked Mr. [Redacted] to present his reasons why he disagreed with the Commission’s NOD. Mr. [Redacted] stated that he used the Jay motorhome as a place to live when he worked in Oregon and also used the motorhome during the summers. Mr. [Redacted] stated that he used the motorhome during the summers for family vacations to the Oregon coast, to Montana, and elsewhere and that he drove the motorhome through Idaho to get to Montana. At that point, the specialist informed Mr. [Redacted] that, as a resident of Idaho, he owed use tax on the value of the motorhome when it was first used in Idaho.

Mr. [Redacted] then spoke concerning the Shelby Cobra. He said that he purchased just the body at a swap meet and was going to put wings on the body to use it as a display on the roof of his

airport building in Oregon. He passed around a picture of the Shelby Cobra. The picture showed the body of a Shelby Cobra that was black in color. Mr. [Redacted] said he decided against using the Shelby Cobra body as a display and sold the body and title at the [Redacted] Swap Meet. He said he could not recall how much the body sold for because it was a cash sale.

On May 19, 2000, the specialist called Mr. [Redacted] because the technician had received documentation showing that Mr. [Redacted] had renewed the Oregon registration on the Shelby Cobra in the spring of 2000. When the specialist asked Mr. [Redacted] why he renewed the registration, Mr. [Redacted] said he was sent the renewal notice 60 days prior to the renewal date and just paid it.

After the hearing, the technician received from the Oregon Department of Transportation (ODT) a complete vehicle history on Mr. [Redacted]' 1995 Shelby Cobra, [Redacted] included the following documents:

1. The ODT motor vehicle title which showed that Mr. and Mrs. [Redacted] applied for the title and registration for the Shelby Cobra on June 21, 1996. The process date for the title and registration was July 11, 1996.
2. The manufacturers "Certificate of Origin for a Vehicle" from the [Redacted] of [Redacted], New York. The date (of purchase) on the certificate is January 25, 1995. There is a statement on the certificate that reads as follows "It is further certified that this was the first transfer of such new vehicle in ordinary trade or commerce." The certificate shows the vehicle being transferred to Mr. [Redacted], [Redacted], [Redacted], Idaho 83709.
3. The ODT Renewal Application with instructions that stated "**Before DMV can issue plates or stickers, you must:**

Complete section 1 below if this is a motor vehicle subject to financial responsibility requirements (insurance). If this is **not a motorized vehicle**, insurance information is not required. **Sign this application.**

Mr. [Redacted] completed Section 1 of the renewal application and listed State Farm as his insurance company and [Redacted] as his policy number. The ODT Renewal Application for the 1995 Shelby Cobra was signed by [Redacted] and dated May 12, 2000.

In this case, the taxpayers are appealing a use tax deficiency determination by the Commission. In such cases, the burden is upon the taxpayers to show that the deficiency determination is incorrect. See Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575, 716 P.2d 1344 (App. 1986).

Besides taxing retail sales, Idaho's Sales Tax Act also imposes an excise tax on the storage, use, or consumption of tangible personal property in Idaho. Idaho Code § 63-3621 (1995) provides in part:

An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property acquired on or after July 1, 1965, for storage, use, or other consumption in this state at the rate of five per cent (5%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property.

The use tax acts as a counterpart to the sales tax by reaching property used in Idaho but purchased free from tax in this state or in other states. It applies to "every person storing, using, or otherwise consuming, in this state, tangible personal property," and the person's liability is not extinguished until the tax has been paid to this state. Idaho Code § 63-3621(a). It is the physical presence of the property within the state which provides sufficient nexus to justify the assessment of use taxes, without regard to whether the person is a resident or nonresident of the state. See, for example, Towle v. Commissioner of Revenue, 492 N.E.2d 739, 743 (Mass. 1986), ruling that the

state could constitutionally impose use tax on a sailboat temporarily stored within the state by a nonresident: "There is no constitutional problem with a State's imposing a tax on property used in that State, but purchased elsewhere."

The terms "storage" and "use" are broadly defined by Idaho Code § 63-3615. Storage includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside the state of tangible personal property purchased from a retailer. Use includes the exercise of any right or power over tangible personal property incident to ownership of the property. The terms do not include the sale of tangible personal property in the regular course of business or storage or use for the purpose of subsequently transporting the property out of Idaho for use solely outside this state.

Because of the obvious difficulties in tracking personal property entering and leaving the state, Idaho Code 63-3621(i) provides that "[i]t shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state." This presumption applies in this case to any vehicles brought into Idaho by the taxpayers. In construing a similar statutory presumption contained in the Massachusetts' sales and use tax act, that state's Supreme Court held that a bare assertion by the taxpayer that at the time of purchase he did not intend to use the property in the state was not sufficient to rebut the presumption. M & T Charters v. Com'r of Revenue, 533 N.E.2d 1359, 1361-62 (Mass. 1989).

In summary, any tangible personal property brought into this state by any person (resident or nonresident) is presumed to have been brought into this state for storage or use here and is subject to use tax unless the person can either show that the property was not "stored" or "used" here or can identify an applicable exemption from use tax. If a person brought vehicles into this state and used

or stored them here, that person is liable for use tax unless the person's actions fall clearly within some exemption to the use tax.

It is well established in Idaho that exemptions from tax must be strictly construed against the party claiming the exemption:

Statutes granting exemptions, which exist as a matter of legislative grace, are strictly construed against the taxpayer and in favor of the state. . . . The burden is on the claimant taxpayer to clearly establish a right of exemption and the terms of the exemption must be so specific and certain as to leave no room for doubt. . . . An exemption cannot be sustained unless it is within the spirit as well as the letter of the law. . . . The courts are bound by the statute and cannot create or extend by judicial construction an exemption not specifically authorized. . . .

Appeal of Evangelical Lutheran Good Samaritan Society, 119 Idaho 126, 129, 804 P.2d 299 (1990).

Although the above case involved property taxes, the rule is equally applicable in cases involving excise taxes. See, Leonard Const. Co. v. State ex rel. State Tax Commission, 96 Idaho 893, 896, 539 P.2d 246 (1975) (exemption from use tax must be strictly construed against taxpayer).

In this case the taxpayers have the burden of clearly establishing that they fall within the terms of some exemption to Idaho's use tax. Further, the terms of any exemption the taxpayers' claim must be so specific and certain as to leave no room for doubt that the exemption applies to the taxpayers' use of the vehicles in Idaho.

Any person, resident or nonresident, who uses or stores a vehicle in this state for which no sales or use taxes have been previously paid, is responsible for paying Idaho use taxes on the vehicle unless an exemption from the tax is clearly applicable. Idaho Code § 63-3621(1) (1995) creates a limited exemption from use tax for motor vehicles occasionally used in Idaho by nonresidents of this state. During the period relevant to this case, that section provided:

- (1) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or

licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months and which is not required to be registered or licensed under the laws of this state, or to the use of household goods, personal effects and private automobiles by a bona fide resident of this state, if such articles were acquired by such person in another state while a bona fide resident thereof and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. (Emphasis added.)

The above provision sets forth two distinct exemptions from use tax for automobiles used in Idaho. The first exemption applies only to nonresidents of Idaho who use vehicles for limited periods of time in Idaho. The second exemption applies to automobiles and other property acquired by persons while they are *bona fide* residents of another state who bring the property with them when they become *bona fide* residents of this state. Neither exemption applies to the facts of this case since the vehicles in question were acquired while the taxpayers were residents of Idaho.

In summary, during the period in which the taxpayers used their vehicles in Idaho, the requirements of the nonresident exemption for motor vehicles were:

1. The vehicles must be used by a nonresident;
2. The vehicles must be licensed under the laws of the owner's state of residence;
3. The vehicles must not have been used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months; and
4. The vehicles must not have been required to be registered or licensed under the laws of this state.

The final element which must be established is that the vehicle was not required to be titled under the laws of Idaho. Idaho Code § 49-501 provides that any vehicle required to be registered in Idaho is required to be titled in this state. Idaho Code § 49-401A provides that a

resident of Idaho must register in Idaho any vehicle he intends to operate in this state. Idaho Code § 49-119(11) defines "resident":

"Resident" means for purposes of vehicle registration, titling, a driver's license or an identification card, a person whose domicile has been within Idaho continuously for a period of at least ninety (90) days, . . . Establishment of residency shall include a spouse and dependent children who reside with that person in the domicile. A domicile shall not be a person's workplace, vacation or part-time residence. (Emphasis added.)

The Motor Vehicle Act does not define "domicile," but the Idaho Income Tax Act does define this term in great detail. Idaho Income Tax Administrative Rule 014.02 states in pertinent part:

02. Domicile. The term domicile means the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. Domicile, once established, is never lost until there is a concurrence of: a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile. All individuals who have been domiciled in Idaho for the entire taxable year, within the meaning of the foregoing definition of domicile, are residents for Idaho income tax purposes, even though they have actually resided outside this state during the whole or part of the taxable year, except: . . .

If the taxpayers failed to meet any of the above requirements, they did not qualify for the exemption and were required to pay use taxes for their use of the vehicles in Idaho.

In keeping with the rule of strict construction of exemptions, the burden is upon the taxpayers to show that they clearly fell within the terms of the exemption. The taxpayers must show that the terms of the exemption are "so specific and certain as to leave no room for doubt" as to their applicability to their use of vehicles in this state. Appeal of Evangelical Lutheran Good Samaritan Society, supra, 119 Idaho at 129.

The statute imposing a penalty for failure to file can be found in Idaho Code § 63-3046(c) (1995) which states:

In the event the return required by this chapter is not filed, or in the event the return is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of five per cent (5%) of the tax due on such returns for each month elapsing after the due date of such returns until such penalty amounts to twenty-five per cent (25%) of the tax due on such returns.

The statute relating to filing and payment of sales and use taxes, Idaho Code § 63-3623 (1995), says in pertinent part:

(a) The taxes imposed by this act are due and payable to the state tax commission monthly on or before the twentieth day of the succeeding month. . . .

(c) On or before the twentieth day of the month a return shall be filed with the state tax commission in such form as the state tax commission may prescribe.

(d) For the purpose of the sales tax, a return shall be filed by every seller. For the purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent. . . .

Thus, as a matter of law, the Sales Tax Act required that taxpayers file a use tax return on the succeeding month.

The Idaho Supreme Court, in hearing Union Pacific Railroad Company v. State Tax Commission, 105 Idaho 471, 670 P.2d 878 (1983), addressed whether the taxpayer was required to pay interest. The Court said:

The general rule is that absent statutory authorization, courts have no power to remit interest imposed by statute on a tax deficiency. American Airlines, Inc. v. City of St. Louis, 368 S.W.2d 161 (Mo. 1963); *see generally* 85 C.J.S. Taxation, § 1031(c) (1954). We agree with the State that I.C. § 63-3045(c) is clear and unequivocal when it states that “interest . . . shall be assessed” and “shall be

collected.” This section is not discretionary, but rather, it is mandatory. Following the language of this section we hold that this Court, as well as the district court, lacks any power to remit the interest that is mandated by the statute. Therefore, as to the interest issue we reverse with directions for the trial court to award interest from 1942.

To summarize some of the important points found in this decision up to this point:

The taxpayers did have many of their motor vehicles titled and registered in the state of Oregon thereby avoiding the payment of Idaho sales and use tax on those motor vehicles used in Idaho. The taxpayers continued with this practice until the Commission intervened. The taxpayers did pay a fair amount of use tax on some of their motor vehicles. At this point, the Commission and the taxpayers are in disagreement over the amount of use tax due on two of the taxpayers’ motor vehicles used in Idaho, the 1996 Jay motorhome and the 1995 Shelby Cobra (1966 replica).

Regarding the taxpayers’ Jay motorhome, Mrs. [Redacted]’ letter and phone conversations with the technician made it appear that the motorhome was in Oregon for business purposes only and never touched Idaho soil. However, Mr. [Redacted] admitted during the hearing that the motorhome was used in Idaho for family vacations during the summers. Based on these facts, the Commission finds that Idaho use tax due on the motorhome should be based on the total purchase price paid for the motor home in May 1996. The NOD was based on 50% of the original value depreciated by the taxpayers on their Schedule C business, [Redacted]. The taxpayers have paid use tax on their 1995 Shelby Cobra giving it a value of \$1,000. The technician questioned such a low value on this sports car. Mr. [Redacted]’ letters and telephone conversations with the technician previously cited make it sound like Mr. [Redacted] had almost completed the kit car. In one conversation with the technician, Mr. [Redacted] mentions removing the engine before selling the body. If there was an engine placed in the Cobra, there must have been a car frame involved. During an August 22, 2000, telephone call with the technician, Mr. [Redacted] said he

sold the Cobra at a swap meet in Nevada. Later, in a letter received September 20, 2000, Mr. [Redacted] stated he sold the Cobra body at the Portland swap meet.

During the taxpayers' hearing, Mr. [Redacted] said that the Cobra was just a car body that he purchased at a swap meet in Nevada and his intended use for the Cobra was to put wings on it and stick it on the top of his building as a sign. He also said the reason for titling the Cobra body was so he could sell it at the [Redacted] Swap Meet that took place during the first week of April 2000.

The facts are that, Mr. [Redacted] purchased the Cobra on January 25, 1995, from a manufacturer out of the state of New York. Mr. [Redacted] titled and registered the Cobra in Oregon in June 1996 approximately a year and a half after he purchased it. Mr. [Redacted] renewed the registration for the Cobra on April 28, 1998. Then Mr. [Redacted] renewed the registration for the Cobra on May 12, 2000. On the registration renewal Mr. [Redacted] put down his insurance company and policy number. This information was only required if the renewal was for a motorized motor vehicle. Current ODT records show that the Cobra is still titled and registered to the taxpayers.

Based on the fact that the Cobra was purchased as a kit car and assembled by Mr. [Redacted], the cost to him would be less than buying an already completed Cobra. Mr. [Redacted] has not provided any documentation as to the cost of all the components used to build his kit car. Therefore, the Commission will reduce the value placed on the Cobra to \$22,000 based on research of unassembled Cobra kit cars found on the Internet and compute interest from the date Mr. [Redacted] first titled and registered the Cobra in Oregon on June 21, 1996.

The Commission finds the taxpayers are residents of the state of Idaho. The taxpayers recognized this fact by identifying Idaho as their state of domicile for purposes of the homeowner's

exemption, voter registration, and by filing resident Idaho income tax returns. Since the taxpayers are residents of Idaho, their use or storage of the motor vehicles in Idaho required the payment of use taxes to this state.

WHEREFORE, the Notice of Deficiency Determination dated January 16, 2000, as MODIFIED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES HEREBY ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>TAX DUE</u> <u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
5/26/96	96 Jay motor home	\$42,232	\$2,112	\$528	\$845	\$3,485
6/21/96	95 Shelby Cobra	22,000	1,100	275	440	<u>1,815</u>
				TOTAL		<u>\$5,300</u>
				LESS PAYMENT		< <u>50</u> >
				TOTAL DUE		<u>\$5,250</u>

Interest is computed through December 31, 2001.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2001.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2001, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No. [Redacted]

ADMINISTRATIVE ASSISTANT 1